

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL TORRESCANO,

Plaintiff,

v.

MARCUS GOODWATER; CITY OF
WALLA WALLA; MICHELLE
MORALES, WALLA WALLA
COUNTY; JOHN/JANE DOE agents
of CITY OF WALLA WALLA; and
JOHN/JANE DOE agents of WALLA
WALLA COUNTY,

Defendants.

NO. 4:22-CV-5049-TOR

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

BEFORE THE COURT is Defendants' Joint Motion to Dismiss Pursuant to Rule 12(b)(6). ECF No. 22. This matter was submitted for consideration without oral argument. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Defendants' Joint Motion to Dismiss (ECF No. 22) is **GRANTED**.

BACKGROUND

This case arises out of events occurring during an investigation and prosecution of Anthony Haworth for Rape in the Third-Degree – Domestic Violence, Indecent Liberties – Domestic Violence, Incest in the First Degree – Domestic Violence, and Voyeurism – Domestic Violence. Plaintiff, Michael Torrescano was one of the witnesses who was interviewed, deposed and whose cellphone was searched.

On June 14, 2018, Det. Goodwater and Morales interviewed Torrescano. During the interview, Torrescano gave Det. Goodwater his cellphone to review messages exchanged between Torrescano and A.S. It was discovered later that some of the messages between Torrescano and A.S. had been deleted from Torrescano’s cellphone. On August 1, 2018, a search warrant was issued for Torrescano’s cellphone.

On July 28, 2020, Plaintiff filed a Complaint in the United States District Court for the Southern District of California. ECF No. 1. Plaintiff named as Defendants Marcus Goodwater, the City of Walla Walla, Michelle Morales, Walla Walla County, and John and Jane Does. No allegations are made against the John and Jane Doe defendants. The Complaint alleges five causes of action, including (1) violations under 42 U.S.C. § 1983 against Goodwater and Morales; (2) violations under 42 U.S.C. § 1983 against Walla Walla County and the City of

1 Walla Walla; (3) invasion of privacy against all Defendants; (4) intentional
2 infliction of emotional distress against all Defendants; and (5) negligence against
3 all Defendants. *Id.*

4 The case was then transferred from Southern California to this Court on
5 April 6, 2022.

6 This Court has extensive familiarity with the parties and parallel claims
7 made by Anthony Haworth in his civil action for damages. See *Anthony Haworth*
8 *v. Walla Walla, et al.*, 4:19-CV-5254-TOR.

9 DISCUSSION

10 A. Motion to Dismiss for Failure to State a Claim

11 Defendants move to dismiss Plaintiff's complaint for failure to state a claim
12 pursuant to Fed. R. Civ. P. 12(b)(6). A motion to dismiss for failure to state a
13 claim "tests the legal sufficiency" of the plaintiff's claims. *Navarro v. Block*, 250
14 F.3d 729, 732 (9th Cir. 2001). To withstand dismissal, a complaint must contain
15 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp.*
16 *v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the
17 plaintiff pleads factual content that allows the court to draw the reasonable
18 inference that the defendant is liable for the misconduct alleged." *Ashcroft v.*
19 *Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). This requires the plaintiff to
20 provide "more than labels and conclusions, and a formulaic recitation of the

1 elements.” *Twombly*, 550 U.S. at 555. While a plaintiff need not establish a
2 probability of success on the merits, he or she must demonstrate “more than a sheer
3 possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678.

4 When analyzing whether a claim has been stated, the Court may consider the
5 “complaint, materials incorporated into the complaint by reference, and matters of
6 which the court may take judicial notice.” *Metzler Inv. GMBH v. Corinthian*
7 *Colleges, Inc.*, 540 F.3d 1049, 1061 (9th Cir. 2008) (citing *Tellabs, Inc. v. Makor*
8 *Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)). A complaint must contain “a
9 short and plain statement of the claim showing that the pleader is entitled to relief.”
10 Fed. R. Civ. P. 8(a)(2). A plaintiff’s “allegations of material fact are taken as true
11 and construed in the light most favorable to the plaintiff[,]” however “conclusory
12 allegations of law and unwarranted inferences are insufficient to defeat a motion to
13 dismiss for failure to state a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399,
14 1403 (9th Cir. 1996) (citation and brackets omitted).

15 In assessing whether Rule 8(a)(2) has been satisfied, a court must first
16 identify the elements of the plaintiff’s claim(s) and then determine whether those
17 elements could be proven on the facts pled. The court may disregard allegations
18 that are contradicted by matters properly subject to judicial notice or by exhibit.
19 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). The court
20 may also disregard conclusory allegations and arguments which are not supported

1 by reasonable deductions and inferences. *Id.*

2 The Court “does not require detailed factual allegations, but it demands
3 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*,
4 556 U.S. at 662. “To survive a motion to dismiss, a complaint must contain
5 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
6 on its face.’” *Id.* at 678 (citation omitted). A claim may be dismissed only if “it
7 appears beyond doubt that the plaintiff can prove no set of facts in support of his
8 claim which would entitle him to relief.” *Navarro*, 250 F.3d at 732.

9 **B. Section 1983 Claim: Defendants Morales and Goodwater**

10 Defendant Morales contends she is immune from suit under the doctrine of
11 absolute prosecutorial immunity.

12 “State prosecutors are absolutely immune from § 1983 actions when
13 performing functions ‘intimately associated with the judicial phase of the criminal
14 process.’” *Garmon v. Cty. of Los Angeles*, 828 F.3d 837, 842 (9th Cir. 2016)
15 (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). “Functions for which
16 absolute prosecutorial immunity have been granted include the lawyerly functions
17 of organizing and analyzing evidence and law, and then presenting evidence and
18 analysis to the courts and grand juries on behalf of the government; they also
19 include internal decisions and processes that determine how those functions will be
20 carried out.” *Lacey v. Maricopa Cty.*, 693 F.3d 896, 913 (9th Cir. 2012). As the

1 *Lacey* court explained:

2 Prosecutors are absolutely immune from liability for the consequences of
3 their advocacy, however inept or malicious, because it is filtered through a
4 neutral and detached judicial body; they are not necessarily immune for
5 actions taken outside this process, including actions logically – though not
necessarily temporally – prior to advocacy, such as those ‘normally
performed by a detective or police officer,’ like gathering evidence... and
those separate from the process, like providing legal advice to the police.

6 *Id.* at 912 (internal citations omitted).

7 “[A]bsolute immunity is an extreme remedy, and it is justified only where
8 ‘any lesser degree of immunity could impair the judicial process itself.’” *Id.*
9 (quoting *Kalina v. Fletcher*, 522 U.S. 118, 127 (1997)). “Immunity attaches to ‘the
10 nature of the function performed, not the identity of the actor who performed it.’”
11 *Id.* at 912 (quoting *Kalina*, 522 U.S. at 127). This functional approach means that
12 some of a prosecutor’s actions may be entitled to absolute immunity, while other
13 actions taken in the course of the same investigation may not be entitled to
14 absolute immunity, even if “all of plaintiffs’ claims are predicated on the same
15 constitutional violation.” *Torres v. Goddard*, 793 F.3d 1046, 1056 (9th Cir. 2015).

16 A thorough review of the Complaint shows that Plaintiff has not alleged any
17 constitutional violation by Defendant Morales. Therefore, Defendant Morales is
18 entitled to absolute immunity.

19 Defendant Goodwater contends he is immune from suit under the doctrine of
20 qualified immunity.

1 Qualified immunity shields government actors from civil damages unless
2 their conduct violates “clearly established statutory or constitutional rights of
3 which a reasonable person would have known.” *Pearson v. Callahan*, 555 U.S.
4 223, 231 (2009). Generally, the defendant has the burden of pleading and proving
5 this affirmative defense. *Frudden v. Pilling*, 877 F.3d 821, 831 (9th Cir. 2017).
6 *But see LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1157 (9th Cir. 2000) (“[P]laintiff bears
7 the burden of showing that the rights allegedly violated were ‘clearly
8 established.’”).

9 In evaluating a state actor’s assertion of qualified immunity, the Court must
10 determine: (1) whether the facts, viewed in the light most favorable to the plaintiff,
11 show that the defendant’s conduct violated a constitutional right; and (2) whether
12 the right was clearly established at the time of the alleged violation such that a
13 reasonable person in the defendant’s position would have understood that his
14 actions violated that right. *See Saucier v. Katz*, 533 U.S. 194, 201-02 (2001)
15 (*overruled in part by Pearson*, 555 U.S. at 227) (holding that courts may exercise
16 sound discretion in deciding which of the two prongs should be addressed first). If
17 the answer to either inquiry is “no,” then the defendant is entitled to qualified
18 immunity and may not be held personally liable. *Glenn v. Washington Cty.*, 673
19 F.3d 864, 870 (9th Cir. 2011) (citing *Pearson*, 555 U.S. at 236).

1 The second prong of the *Saucier* analysis must be “undertaken in light of the
2 specific context of the case, not as a broad general proposition.” *Mullenix v. Luna*,
3 136 S. Ct. 305, 308 (2015). Thus, “officers are entitled to qualified immunity
4 unless existing precedent squarely governs the specific facts at issue.” *Id.* at 1153;
5 *see Sharp v. Cty. of Orange*, 871 F.3d 901, 911 (9th Cir. 2017) (Plaintiff “must
6 point to prior case law that articulates a constitutional rule specific enough to alert
7 *these deputies in this case that their particular conduct* was unlawful.”). Such
8 precedent “must be ‘controlling’ – from the Ninth Circuit or Supreme Court – or
9 otherwise be embraced by a ‘consensus’ of courts outside the relevant
10 jurisdiction.” *Sharp*, 871 F.3d at 911 (quoting *Wilson v. Layne*, 526 U.S. 603, 617
11 (1999)).

12 A thorough review of the Complaint shows that Plaintiff has not alleged any
13 constitutional violation by Defendant Goodwater outside his role as a state
14 investigator. Defendant Goodwater’s dealings with Plaintiff did not violate any
15 clearly established right. Obtaining the search warrant for Plaintiff’s cellphone
16 was approved by a superior court judge and suppression of the search was denied
17 by the state courts. While Plaintiff contends false information was provided, he
18 has not identified any materially false evidence. Therefore, Defendant Goodwater
19 is entitled to qualified immunity. These claims against both Goodwater and
20 Morales are dismissed.

1 **C. Section 1983 Claim: Defendants Walla Walla County and the City of**
2 **Walla Walla**

3 Defendants argue that Defendants Walla Walla County and the City of
4 Walla Walla should be dismissed because Plaintiff cannot establish the requisite
5 causal connection together with a viable constitutional deprivation.

6 “In order to set forth a claim against a municipality under 42 U.S.C. § 1983,
7 a plaintiff must show that the defendant’s employees or agents acted through an
8 official custom, pattern or policy that permits deliberate indifference to, or violates,
9 the plaintiff’s civil rights; or that the entity ratified the unlawful conduct.” *Shearer*
10 *v. Tacoma Sch. Dist. No. 10*, 942 F. Supp. 2d 1120, 1135 (W.D. Wash. 2013)
11 (citing *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690-91 (1978)). As such, a
12 policy, practice or custom can be established in three ways: (1) an employee acts
13 pursuant to an expressly adopted official policy, (2) an employee acts pursuant to a
14 longstanding practice or custom, or (3) an employee acts as a final policymaker.
15 *Lytle v. Carl*, 382 F.3d 978, 982-83 (9th Cir. 2004).

16 However, without a constitutional injury, *Monell* liability is unavailable. *See*
17 *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Fidge v. Lake Cty.*
18 *Sheriff’s Dep’t*, 683 F. App’x 605, 606 (9th Cir. 2017). Even if Plaintiff had a
19 viable constitutional injury, Plaintiff’s *Monell* claims also fail because he has not
20 identified any actions taken pursuant to established policy, practice, custom, or

1 final policymaker action of Walla Walla County or the City. Accordingly, this
2 claim is dismissed.

3 **D. Invasion of Privacy: all Defendants**

4 Plaintiff contends his California privacy rights were violated by the
5 execution of a search warrant on his cellphone. ECF No. 1 at 29. The trial court
6 issued a warrant for the seizure of Plaintiff's cellphone. Defendants were therefore
7 allowed to seize and inspect his cellphone. While Plaintiff claims the Defendants
8 "executed an illegal search warrant under false pretenses" he provides no facts
9 supporting these assertions. The warrant was upheld by the trial court. This claim
10 is dismissed.

11 **E. Intentional Infliction of Emotional Distress: all Defendants**

12 Plaintiff contends that Defendants intentionally inflicted emotional distress
13 under California law. ECF No. 1 at 30. The elements of a California intentional
14 infliction of emotional distress claim are (1) extreme and outrageous conduct with
15 the intent to cause, or with reckless disregard for the probability of causing,
16 emotional distress; (2) the plaintiff suffers extreme or severe emotional distress;
17 and (3) the defendant's extreme and outrageous conduct was the actual and
18 proximate cause of the plaintiff's extreme or severe emotional distress. *So v. Shin*,
19 212 Cal.App.4th 652, 671, 151 Cal.Rptr, 3d 257 (2013). "Outrageous conduct is
20

1 conduct that is intentional or reckless and so extreme as to exceed all bounds of
2 decency in a civilized community”. *Id.*

3 All of the alleged conduct falls far below conduct “so extreme as to exceed
4 all bounds of decency in a civilized community”. This claim is dismissed.

5 **F. Negligence: all Defendants**

6 Plaintiff contends that Defendants were negligent under California law.
7 ECF No. 1 at 30-31.

8 According to California law, “Except as otherwise provided by statute, a
9 public entity is not liable for an injury resulting from an act or omission of an
10 employee of the public entity where the employee is immune from liability.”
11 Gov.Code, § 815.2, subd. (b). “A public employee is not liable for injury caused
12 by his instituting or prosecuting any judicial or administrative proceeding within
13 the scope of his employment, even if he acts maliciously and without probable
14 cause.” Gov.Code § 821.6. Because investigation is “an essential step” toward the
15 institution of formal proceedings, it “is also cloaked with immunity.” *Amylou R. v.*
16 *Cnty. of Riverside*, 28 Cal. App. 4th 1205, 1210, 34 Cal. Rptr. 2d 319, 321 (1994).
17 This immunity would also apply to the invasion of privacy and intentional
18 infliction of emotional distress claims as well.

19 This claim is dismissed.

1 **G. OPPORTUNITY TO AMEND**

2 As a general rule, leave to amend should be “freely given when justice so
3 requires.” Fed.R.Civ.P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962). We
4 consider four factors when reviewing a decision whether to permit an amendment:
5 (1) bad faith on the part of the plaintiffs; (2) undue delay; (3) prejudice to the
6 opposing party; and (4) futility of the proposed amendment. *Lockheed Martin*
7 *Corp. v. Network Sols., Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (citation omitted).

8 Plaintiff does not seek leave to amend his Complaint. ECF Nos. 23, 24. The
9 Court finds that it is absolutely clear that no amendment will cure the deficiencies
10 in Plaintiff’s Complaint. Therefore, the Court dismisses Plaintiff’s Complaint with
11 prejudice.


12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 13 1. Defendants’ Joint Motion to Dismiss Pursuant to Rule 12(b)(6), ECF
14 No. 22, is **GRANTED**. All claims are dismissed with prejudice.
15 2. All remaining hearings, deadlines, and trial are **VACATED**.

16 The District Court Executive is directed to enter this Order, enter Judgment
17 accordingly, furnish copies to counsel and **CLOSE** the file.

18 DATED November 8, 2022.




THOMAS O. RICE
United States District Judge